

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

EGGBOILER2K and JACOB COPLEY,

Plaintiffs

v.

ARMAN FOLEY IN HIS OFFICIAL CAPACITY
AS SPEAKER OF THE HOUSE OF
REPRESENTATIVES

Defendant

Case No.

4:24-cv-0143/QWT

4:24-cv-0146/DER

THREE-JUDGE COURT

Before:

DEROGATORY and FOLEY, District Judges and **QWERTY**, Chief Judge

OPINION AND ORDER GRANTING AN ADMINISTRATIVE STAY

The Plaintiff-Movants *pro se*.

Alex J. Cabot, *Esq.*, for the defendant.

PER CURIAM:

This is an urgent order on an administrative stay filed with this court by the plaintiff. Plaintiff-movants are members of the United States House of Representatives. They bring suit in order to complain of alleged violation of House Rules. We issue this short order with minimal representations from both parties, in view of the short timeframe at play – the plaintiffs allege that the deadline point beyond which any harm becomes irreparable is today. Unfortunately, it was difficult to make contact with the defendants, impairing this Court’s ability to fully consider the appropriateness of an administrative stay. Such a stay is appropriate “to permit time for full consideration of the

motion[for injunctive relief].” *Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1137 (D.C. Cir. 1988). *See also United States v. Texas*, No. 23A814 (Mar. 19, 2024) (statement of BARRETT, J., concurring in denial of applications to vacate stay).

This Court does not opine on the merits the merits, as “[t]he purpose of this administrative stay is to give the court sufficient opportunity to *consider* the merits of the motion.” *Riffin v. Surface Transp.*, No. 07-1483, at *2 (D.C. Cir. Dec. 6, 2007) (emphasis added). *See also M.M.V. v. Barr*, 456 F. Supp. 3d 193 (D.D.C. 2020) *aff’d sub nom. M.M.V. v. Garland*, 1 F.4th 1100, 1106 (D.C. Cir. 2021) (granting administrative stay and then dismissing merits claim at later time), *accord Nat’l Urban League v. Ross*, 977 F.3d 698, 700-01 (9th Cir. 2020) (“[A]n administrative stay ‘is only intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered on the merits, and does not constitute in any way a decision as to the merits of the motion for [injunctive relief].’”) (*per curiam*). *See generally* Rachel Bayefsky, *Administrative Stays: Power and Procedure*, 97 Notre Dame L. Rev. 1941 (2022).

This Court accepts that defendant argues that the claim is non-justiciable under the political question doctrine, or in the alternative under some combination of the House Officers or Speech-or-debate clauses. We acknowledge that on facial examination of the argument it is not entirely meritless. But this Court cannot resolve, even preliminarily, the merits or jurisdictional questions otherwise than in light of briefing and reflection which the alleged urgency does not afford. *Compare Sinz v. U.S. House of Reps.*, 2 AA.Dig. _____, 4:23-cv-0035M/QWT (D.D.C. Nov. 29 2023) (granting administrative stay), [link](#) with *Sinz v. U.S. House of Reps.*, 2 AA.Dig.

_____, 4:23-cv-0035M/QWT (D.D.C. Dec. 3 2023), [link](#) (dismissing preliminary injunction on justiciability and speech-or-debate grounds).

This Court will set an expedited schedule for disposition of the preliminary injunction. Furthermore, as several actions are being brought by the same plaintiffs sounding in different causes of action against the same defendants over the same transaction, which have been assigned to different judges, the Court will consolidate actions 4:24-cv-0143/QWT and 4:24-cv-0146/DER and appoint a three-judge court to hear the proceedings in accordance with this Court's inherent power to regulate its docket. *See In re Fieger*, 191 F.3d 451 (6th Cir. 1999) (court has inherent power to appoint three-judge panel for the purposes of proper administration of justice).

QWERTY, C.J., concurring:

My brother FOLEY raises several particularly apt concerns relating to the justiciability of this claim. I wholly agree that at first view the claims at bar present serious justiciability defects, but the time-sensitive nature of this proceeding — the plaintiff has impressed upon the Court that a “deadline” beyond which the harm alleged will become irreparable is looming, and as much as the Court has attempted to do so, the defendant has offered no contrary theory — mean that it is inappropriate in my view to opine fully on the justiciability issues here and now.

To that end, it cannot be doubted that this Court “always has jurisdiction to determine its own jurisdiction.” *Irregulators v. Fed. Commc'ns Comm'n*, 953 F.3d 78, 84 (D.C. Cir. 2020) (quoting *United States v. Ruiz*, 536 U.S. 622, 628, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002)) *see also Brownback v. King*, 141 S. Ct. 740, 750, 209 L.Ed.2d 33

(2021) (“[A] federal court always has jurisdiction to determine its own jurisdiction.”). To my mind, in granting this stay, which does not in any way reach to the merits, we are only facilitating that exercise.

FOLEY, J., dissenting:

“[T]he doctrine of separation of powers . . . is at the heart of our Constitution.” *Buckley v. Valeo*, 424 U.S. 1, 119, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). To that end, the Framers understood that to be truly democratic, the legislature must be able to function without judicial interference. This was so well understood that the Speech-or-Debate Clause “occasioned neither speech nor debate at the Constitutional Convention: the Clause gained approval ‘without discussion and without opposition.’” *McCarthy v. Pelosi*, 5 F.4th 34, 38 (D.C. Cir. 2021) (quoting *United States v. Johnson*, 383 U.S. 169, 177, 86 S.Ct. 749, 15 L.Ed.2d 681 (1966)). Likewise, the Rulemaking and House Officers Clauses similarly bar judicial intrusion upon the affairs of the legislature. In light of these constitutional commands, Federal courts have long “refus[ed] to conduct other inquiries “into the internal governance of Congress,” *Public Citizen v. U.S. District Court*, 486 F.3d 1342, 1351 (D.C. Cir. 2007) (quoting *Mester Mfg. Co. v. INS*, 879 F.2d 561, 571 (9th Cir. 1989)), a process implicating political questions which wholly lack any “judicially discoverable and manageable standards” for resolution, *Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012), and which is constitutionally committed to the legislative branch of government.

In light of the clearly non-justiciable nature of plaintiff’s claims, I respectfully dissent.

* * * * *

ORDER

For the foregoing reasons, the court orders as follows:

1. An administrative stay is **granted** for 7 days, extendable by an order of all three judges of the Court. For the duration of the stay, the defendant is enjoined from doing any thing to organise or otherwise further the process of electing a House Majority Leader, and from declaring, appointing or causing to declare or appoint any such person;
2. Actions 4:24-cv-0143/QWT and 4:24-cv-0146/DER are **consolidated** for further disposition.
3. Chief Judge Qwerty, Judge Foley and Judge Derogatory are assigned to form a three-judge court to further hear the consolidated actions.

It is so ORDERED,

25th May 2024

/s/TomFoley
USDJ

/s/Derogatoryy
USDJ

/s/NewPlayerqwerty
CUSDJ